



**123 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**SAO-24-2023 (O&M)**

**Date of decision : 25.02.2025**

**Tek Ram and others**

**...Appellants**

**Vs.**

**Rajbir and others**

**...Respondents**

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sumit Sangwan, Advocate  
for the appellant.

Mr. Naveen S. Bhardwaj, Addl. Advocate General, Haryana  
for respondents No. 7 to 10 and 12(a) to (d).

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**ANIL KSHETARPAL, J. (Oral)**

1. The defendants No. 6, 7, 8, 12 and 27 have filed this second appeal against the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.

2. The plaintiffs filed a suit for grant of decree of declaration that they are owners in possession of the land measuring 241 kanals 06 marlas situated in Ghasola, District Charkhi Dadri, erstwhile District Bhiwani and the defendants have no concern with the same. They also sought declaration that the sale deeds executed on 27.07.2006 and 21.09.2012 are illegal, null and void and the defendants are in possession of the land measuring 76 kanals 04 marlas only with consequential relief for permanent injunction. The trial Court dismissed the suit on 06.02.2017. The first appeal was filed by the plaintiffs. The First Appellate Court has found that the trial Court has committed multiple errors and the judgment of the trial Court is vague and evasive. Thus, the First



Appellate Court has remitted the matter back to the trial Court.

3. The scope and ambit of the enabling powers of the First Appellate Court to remit the matter back to the Lower Court has been explained by the Hon'ble Supreme Court in '***P.Purushottam Reddy and Another v. Pratap Steels Ltd***'. (2002) 2 SCC 686, in the following manner:-

*“10. The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order XLI of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a court of appeal in Order XLI of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand in as much as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under Section 151 of the CPC to order a remand if such a remand was considered pre-eminently necessary ex debito justitiae, though not covered by any specific provision of Order 11 of the CPC. In cases where*



*additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order XLI which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in Mahendra v. Sushila (AIR 1965 SC 365 at p. 399), it is well settled that inherent powers can be availed of ex debito justitiae only in the absence of express provisions in the Code. It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 or Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the*



*CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore must be avoided.”*

4. Order 41 Rule 23-A of the Code of Civil Procedure, 1908, provides that the Appellate Court can remit the matter back to the lower Court only after setting aside the impugned judgment and after forming an opinion that re-trial of the case is necessary. It is evident that the First Appellate Court has not recorded the finding or observation that re-trial of the case is necessary. Before remitting the matter back to the lower Court, the Appellate Court is expected to come to conclusion that re-trial of the case is necessary. The scope of remitting the matter back to the lower Court has been regulated by Order 41 Rule 23 and 23-A of the Code of Civil Procedure, 1908. Hence, it was necessary for the First Appellate Court to form an opinion that the re-trial was necessary, however, there is no observation to that effect.
5. Keeping in view the aforesaid fact, the appeal is allowed. The impugned order passed by the First Appellate Court is set aside and the first appeal is restored to its original number.
6. The parties through their counsel are directed to appear before the First Appellate Court on 24.03.2025.
7. All the pending miscellaneous applications, if any, are also disposed of.

25.02.2025  
neeraj

(ANIL KSHETARPAL)  
JUDGE

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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |